

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Kevin Nicholas	Team: Team # 8	CCRB Case #: 200712278	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Thursday, 08/16/2007 2:30 PM	Location of Incident: the northwest corner of § 87(2)(b) and § 87(2)(b)	Precinct: 43	18 Mo. SOL 2/16/2009	EO SOL 2/16/2009	
Date/Time CV Reported Fri, 08/24/2007 1:23 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 08/24/2007 1:23 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. An officer			043 PCT
2. POM Samuel Newton	15972	915152	043 PCT
3. POM Miguel Santiago	31625	904998	043 PCT
4. LT Fernando Guimaraes	00000	915848	043 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Nathaniel Anthony	03172	923516	043 PCT
2. POM Michael Cuadra	03492	923718	043 PCT
3. SGT Martine Materasso	01124	925686	043 PCT
4. POF Jeannie Corporan	22341	920155	043 PCT

Officer(s)	Allegation	Investigator Recommendation
A.LT Fernando Guimaraes	Abuse: Lt. Fernando Guimaraes authorized questioning § 87(2)(b)	§ 87(2)(b)
B.LT Fernando Guimaraes	Abuse: Lt. Fernando Guimaraes authorized stopping § 87(2)(b)	§ 87(2)(b)
C.POM Samuel Newton	Abuse: PO Samuel Newton threatened § 87(2)(b) with the use of force.	§ 87(2)(b)
D.POM Miguel Santiago	Force: PO Miguel Santiago used physical force against § 87(2)(b)	§ 87(2)(b)
E.POM Miguel Santiago	Force: PO Miguel Santiago used a chokehold against § 87(2)(b)	§ 87(2)(b)
F. An officer	Discourtesy: An officer spoke obscenely and rudely to § 87(2)(b)	§ 87(2)(b)
G.POM Miguel Santiago	Abuse: PO Miguel Santiago strip-searched § 87(2)(b).	§ 87(2)(b)
§ 87(4-b), § 87(2)(g)	§ 87(4-b), § 87(2)(g)	§ 87(2)(b)

Synopsis

On August 16, 2007 at approximately 2:30 PM, § 87(2)(b) went inside a building in the vicinity of § 87(2)(b) and § 87(2)(b) in the Bronx in order to visit his friend. § 87(2)(b) walked up to his friend's apartment, and after discovering that his friend was not home, exited the building approximately five minutes later. When § 87(2)(b) approached his own building nearby, he was approached by two male officers and one female officer. The female officer was identified as Sgt. Materasso of the 43rd Precinct and one of the male officers was identified as PO Cuadra of the 43rd Precinct. It was also determined that Lt. Guimaraes of the 43rd Precinct was present at this time, although it was not possible to determine whether he actually spoke to § 87(2)(b). The officers allegedly asked § 87(2)(b) several basic questions about himself and allegedly asked if he had anything on him (**Allegation A**). § 87(2)(b) denied having anything. An unknown officer shortly thereafter allegedly handcuffed § 87(2)(b) (**Allegation B**). Two more officers appeared at the scene in a prisoner van. These officers were subsequently identified as PO Samuel Newton and PO Miguel Santiago of the 43rd Precinct. § 87(2)(b) was told to get inside the prisoner van and he complied. § 87(2)(b) began cursing at PO Newton, who allegedly approached § 87(2)(b) and held his backhand by his shoulder as though he would hit § 87(2)(b) (**Allegation C**). Immediately thereafter and without warning, PO Santiago approached and allegedly punched § 87(2)(b) in his face (**Allegation D**). PO Santiago then allegedly grabbed onto § 87(2)(b)'s neck and applied pressure in such a manner that § 87(2)(b)'s breathing was restricted (**Allegation E**). At some point during the interaction, a woman who was in charge of § 87(2)(b)'s assisted living facility, § 87(2)(b) looked out a nearby window and addressed the officers. An officer allegedly told § 87(2)(b) to “fuck off” (**Allegation F**). § 87(2)(b) was transported to the 43rd Precinct where PO Santiago allegedly strip-searched him inside a holding cell (**Allegation G**).

§ 87(2)(b), § 87(2)(g)

§ 87(4-b), § 87(2)(g)

Summary of Complaint

§ 87(2)(b) who did not witness this incident, phoned in this complaint to the CCRB on § 87(2)(b)'s behalf on August 24, 2007. § 87(2)(b) was § 87(2)(b) § 87(2)(b) at the time and was employed by § 87(2)(b).

§ 87(2)(b) is a 5'10", 214-pound, § 87(2)(b)-old black male with black hair (his head appeared shaved at the time of his interview). § 87(2)(b) provided an initial complaint narrative on August 24, 2007 (encl. 3 A-C), provided a phone statement on September 12, 2007 (encl. 4 A) and was interviewed at the CCRB on September 17, 2007 (encl. 5 A-H). § 87(2)(b) was also present during § 87(2)(b)'s interview. § 87(2)(b) lives at § 87(2)(b) in a group home (an assisted living facility for psychiatric patients) – part of this building is rented out to the agency that runs the group home, § 87(2)(b) § 87(2)(b) lives with about eight other people.

A photo was taken of a visible injury to § 87(2)(b)'s neck, which § 87(2)(b) described as “a scratch” (encl. 5 G). This mark is not very clear from the photo but it appeared at the time to be a small red dot on the right side of his neck.

§ 87(2)(b), § 87(2)(g)

On August 16, 2007 at approximately 2:30 PM, § 87(2)(b) exited the § 87(2)(b) subway station (6 train) and walked over to the § 87(2)(b) to visit a friend. § 87(2)(b), § 87(2)(g) § 87(2)(b). At first he stated that the building is between § 87(2)(b) and § 87(2)(b). § 87(2)(b) later stated that the friend's building is on § 87(2)(b) (this street runs parallel to the other two streets). § 87(2)(b) walked to the corner of an unknown street intersection, walked up to his friend's building and knocked on a window. § 87(2)(b) mentioned at this point in the interview that this particular building is also a "provider" building. § 87(2)(b) knocked on the window in order for someone to open up the door. Someone opened the door and § 87(2)(b) then walked up to his friend's apartment on the § 87(2)(b) floor. § 87(2)(b) discovered that his friend wasn't home so he came back down and walked out of the building five minutes later. § 87(2)(b) began walking to his own building, located nearby at § 87(2)(b) § 87(2)(b) did not have to cross any streets on his way to his building. In his phone statement, § 87(2)(b) said that his own building is adjacent to his friend's building.

Upon approaching his building, three to four uniformed officers arrived in a green 4-door car. In his initial complaint, § 87(2)(b) said that it was a black car. § 87(2)(b) later stated in his interview, as he also did in his initial complaint and phone statement, that there were only three officers in this car. In his interview and in his phone statement, § 87(2)(b) described these three officers as a white male, a black male, and a white female. In his initial complaint, however, § 87(2)(b) described the officers as two white males and one white female. In his initial complaint and interview, § 87(2)(b) described one white male officer as tall, slim, and in uniform. § 87(2)(b) added in his initial complaint that this officer had straight black hair. This officer was subsequently identified as PO Michael Cuadra of the 43rd Precinct. In his interview, § 87(2)(b) described the other male officer who arrived as being a short black male with a heavy build and wearing a dark blue shirt and "short pants." In his phone statement, § 87(2)(b) described this officer as being in uniform. In his initial complaint, however, § 87(2)(b) said that this officer was actually a white male with a heavy build, who was around § 87(2)(b)'s height - 5'10", and was in uniform. In regards to this second male officer, the black officer that § 87(2)(b) described seems to fit the description of PO Nathaniel Anthony of the 43rd Precinct while the white male officer that § 87(2)(b) described seems to somewhat fit the description for Lt. Guimaraes of the 43rd Precinct. § 87(2)(b) consistently described the female officer at the scene as being a white female, who was tall, slim, blonde and in uniform. This officer was subsequently identified as likely being Sgt. Martine Materasso of the 43rd Precinct.

§ 87(2)(b) initially stated that these officers were not wearing standard uniforms but were wearing sweaters with NYPD markings. § 87(2)(b) later stated in his interview that they were all wearing regular uniforms.

The officers told § 87(2)(b) to approach. The officers asked § 87(2)(b) for his name, asked about his clothes and asked him for his height (**Allegation A**). The officers then asked § 87(2)(b) about an unspecified number (**Allegation A**) and § 87(2)(b) responded that he couldn't provide this information because he couldn't read.

§ 87(2)(b) approached the officers at this point and they asked him what he had on him (**Allegation A**). § 87(2)(b) told them that he had nothing. There was no particular officer speaking to § 87(2)(b) at this time – all the officers were asking him questions (**Allegation A**). The officers handcuffed § 87(2)(b) (**Allegation B**) – § 87(2)(b) didn't know which officer actually did this.

In his interview, § 87(2)(b) said that at this point, all three officers searched him. In his initial complaint, however, § 87(2)(b) specified that PO Cuadra frisked him and then another white male officer searched him. In his phone statement, on the other hand, § 87(2)(b) alleged only that a black male officer searched him.

Shortly thereafter, a black van appeared at the scene and parked at the corner. § 87(2)(b), § 87(2)(g) § 87(2)(b) described the black male officer as tall, slim, with a flat-top hairstyle, and wearing a dark blue sweatshirt with NYPD markings. § 87(2)(b) specifically stated in his initial complaint that this officer was taller than him. This officer was subsequently identified PO Samuel Newton of the 43rd Precinct. § 87(2)(b) described the white male

officer as being short, stocky (pot belly), having tan skin and wearing a dark blue sweatshirt with NYPD markings. This officer was subsequently identified as PO Miguel Santiago of the 43rd Precinct.

PO Cuadra told the other officers to put § 87(2)(b) inside the black van. § 87(2)(b) himself then got inside the van. The officers asked § 87(2)(b) what he had dropped on the floor and § 87(2)(b) again denied having any contraband. § 87(2)(b) explained from inside the van that he was visiting a friend at the time. § 87(2)(b) was “fighting for [his] rights” when speaking to PO Newton, who was standing outside the van. § 87(2)(b) said to PO Newton, “Fuck off. You’ve got nothing on me.” PO Newton approached § 87(2)(b) and held up his right backhand by his right shoulder as though he were about to smack § 87(2)(b) (**Allegation C**). PO Newton told § 87(2)(b) “You’re messing with the wrong one.” PO Newton never actually hit § 87(2)(b).

Shortly thereafter, however, PO Santiago, who had been outside the van, entered the van and punched § 87(2)(b) in his face with his left hand (**Allegation D**). PO Santiago’s punch made contact just above § 87(2)(b)’s left eyebrow – § 87(2)(b) did not sustain any injuries from the punch. PO Santiago then squeezed § 87(2)(b)’s neck with his right hand, causing § 87(2)(b) to sustain a small scratch. PO Santiago squeezed on the front of § 87(2)(b)’s neck and pressed on it “a little bit.” When § 87(2)(b) was asked whether he was able to breathe at this point, § 87(2)(b) said no – his breathing was restricted (**Allegation E**). § 87(2)(b) did not believe that the first three officers at the scene would have witnessed when this happened because they had been standing on the corner and completing paperwork.

At some point, a woman who works at § 87(2)(b)’s assisted living facility looked out the window. § 87(2)(b) and § 87(2)(b) identified this female by name as § 87(2)(b). § 87(2)(b) stated that she works for § 87(2)(b). She was subsequently identified as § 87(2)(b). From the window, § 87(2)(b) explained to the officers that § 87(2)(b) was enrolled in a psychiatric program. § 87(2)(b) did not actually hear it, but § 87(2)(b) reported to him after the incident that an unknown officer had in response told her to “fuck off” (**Allegation F**) and had told her that the police did not care.

The officers then locked § 87(2)(b) to a chain inside the van. There were two prisoners already inside the van, Prisoner1 and Prisoner2. § 87(2)(b) described the first prisoner only as brown-skinned and skinny. § 87(2)(b) described the second male prisoner as an obese black male. This second prisoner was subsequently identified as § 87(2)(b).

§ 87(2)(b), § 87(2)(g) and the two other prisoners were then transported to the stationhouse at approximately 4:30 PM. § 87(2)(b) was not certain what precinct he was brought to but said that it was the one “on the other side of the highway... and Soundview.”

Upon arrival at the stationhouse, § 87(2)(b) was placed him in a cell. PO Santiago then proceeded to strip-search § 87(2)(b) inside the holding cell. § 87(2)(b) did have privacy in this area and no one else could see him strip. PO Santiago ordered § 87(2)(b) to remove all of his clothing, “turn around, open [his] butt cheek” (**Allegation G**). No contraband was ever found on § 87(2)(b). At one point during the strip search, PO Santiago asked § 87(2)(b) if he “[wanted] to finish this.” After the strip search was done, PO Santiago told § 87(2)(b) to put all of his clothing back on.

§ 87(2)(b) was then brought over to another cell where the rest of the prisoners were located. The unknown prisoner and § 87(2)(b) were also strip-searched in the holding cell area as well at some point.

§ 87(2)(b) was inside the cell for approximately an hour and at some point was fingerprinted. The officers then told him that he had no record and let him go.

When § 87(2)(b) was asked if he had any visible injuries in regards to this incident, he said no. § 87(2)(b) did however have a faint dark mark on his neck which he later pointed out and said that this was the scratch that he sustained when PO Santiago grabbed him. He said this mark was originally red and did not bleed. § 87(2)(b) did not seek any medical treatment for his injuries.

Results of Investigation

Attempts to Contact Victim § 87(2)(b)

On October 22, 2007, a contact letter was mailed to § 87(2)(b) at the address provided by § 87(2)(b). On October 22, 2007, a phone call was placed to the direct line for § 87(2)(b) provided by § 87(2)(b). The undersigned had a brief conversation in Spanish with a female who said that no one by the name of § 87(2)(b) resided there. On January 2, 2008, the undersigned called the main line provided for § 87(2)(b) which was also provided by § 87(2)(b). The undersigned spoke to an employee who said that no one by the name of § 87(2)(b) worked there. When the undersigned explained that the exact organization might be called § 87(2)(b), the person on the other line provided a phone number for this organization. The undersigned called § 87(2)(b) that same day and left a voice message. On January 4, 2008, the undersigned received a call from § 87(2)(b) § 87(2)(b). She confirmed that she had an employee named § 87(2)(b) and provided her last name as § 87(2)(b). She said that § 87(2)(b) lived with four of her patients and § 87(2)(b) confirmed that § 87(2)(b) is a psychiatric patient in their care. § 87(2)(b) § 87(2)(b) said that she heard about the above incident from § 87(2)(b) and § 87(2)(b) had simply told her that officers had been rude to her. § 87(2)(b) subsequently provided § 87(2)(b)'s cell phone number to the CCRB. Between May 7, 2008 and October 14, 2008, five calls were placed to this mobile number. § 87(2)(b) was reached on May 19, 2008 but it became apparent that § 87(2)(b) did not understand English. Subsequent phone calls to § 87(2)(b) either went to a message stating that the line had been disconnected or went to a busy signal. On October 1, 2008 and October 14, 2008, contact letters in Spanish were mailed to § 87(2)(b)'s residence. § 87(2)(b) has never contacted the CCRB in response to these calls and letters.

Attempts to Contact Witness § 87(2)(b)

A search of BADS conducted on October 2, 2007 revealed that § 87(2)(b) was arrested around 15 minutes prior to § 87(2)(b)'s arrest and also revealed that § 87(2)(b) had the same arresting officer, PO Newton. Since § 87(2)(b)'s arrest report indicated that he generally fit the description for the second prisoner inside the prisoner van, numerous attempts were made to get in contact with him. On October 22, 2007 and December 19, 2008, contact letters were mailed to the address provided for § 87(2)(b) on his arrest report. On January 3, 2008, the undersigned conducted checks of Coles, DMV and 411.com. Both Coles and 411.com yielded negative results. DMV provided an apartment number for § 87(2)(b). As a result, another contact letter was mailed to § 87(2)(b) at the updated address provided by DMV on January 3, 2008. A Lexis-Nexis search request was made on July 11, 2008. This search ultimately yielded no new contact information for § 87(2)(b) § 87(2)(b), § 87(2)(g) § 87(2)(b).

Officer Statements – PO Samuel Newton

PO Samuel Newton, a 6'1", 240-pound, § 87(2)(b) old dark-skinned Hispanic male, was interviewed at the CCRB on January 11, 2008 (encl. 9 A-C). PO Newton has been a member of service for 13 years. On August 16, 2007, he had an 8:00 AM to 4:35 PM tour and was assigned to the prisoner van for a SNEU operation. He was working with PO Santiago. He was in uniform and wearing a raid jacket. PO Newton could not recall what exactly the other members of his team were wearing that day. The prisoner van was a black van, RMP #§ 87(2)(b). He had the following memo book entries (encl. 6 A-C) around the time of the incident: "1414 – 1 under from § 87(2)(b) § 87(2)(b) 1430 – 1 under." It should also be noted that at the start of his entries for the day, he wrote: "P-van with PO Santiago, Lt. Guimarras. Observation post by PO Anthony/Cuadra"

The arrest report that PO Newton prepared for § 87(2)(b) (encl. 7 A-C) listed arrest time as 2:30 PM and the 'offence location' as § 87(2)(b) § 87(2)(b) a public housing area. § 87(2)(b) was charged with § 87(2)(b). The arrest narrative states: § 87(2)(b) § 87(2)(b). The report indicates that PO Newton was in uniform and that he did not use any force. The processing type was recorded as 'DAT'. Sgt. Materasso was the supervisor who approved the report and it was entered into the system by PO Corporan.

The arrest report that PO Newton prepared for § 87(2)(b) (encl. 8 A) indicates that § 87(2)(b) was arrested at 2:14 PM (16 minutes prior) at the corner of § 87(2)(b) and § 87(2)(b) (only two blocks away). § 87(2)(b) was described on the report as being a 5'7"-tall, 200-pound, § 87(2)(b)-old black male.

On August 16, 2007 at approximately 2:30 PM, the SNEU team was conducting observation of § 87(2)(b) located at the corner of § 87(2)(b). This address is a clean halls building and a known drug-prone location. PO Newton did not know where the observation post, consisting of PO Cuadra and PO Anthony, was set up, but at around 2:30, they put an individual's description over the radio. PO Newton was not sure what vehicle the observation post was using, but said that it is usually either a black Impala or a gold sedan.

At first, PO Newton said that he and PO Santiago approached this individual, § 87(2)(b) and stopped him. During his interview, PO Newton viewed a photo of § 87(2)(b) and positively identified him. Later in the interview, however, when PO Newton was asked if he might have arrived after § 87(2)(b) had been already stopped, PO Newton stated that he actually was not certain. PO Newton was not sure whether he and PO Santiago went to the arrest scene or whether other officers brought § 87(2)(b) to them.

PO Newton then stated that at the first point he saw § 87(2)(b) he was being placed inside the prisoner van. PO Newton could not recall for certain whether or not § 87(2)(b) was in handcuffs at this point and did not know which officer or officers handcuffed him.

PO Newton was certain that as the arresting officer he did speak to § 87(2)(b). § 87(2)(b) claimed that he had never gone inside the building in question. § 87(2)(b) "failed to give us the correct statements or answers as to where he's been, and his stories as to why he was in the building." PO Newton could not recall § 87(2)(b)'s demeanor at the time of the incident and could not recall any specific remarks, such as, "Fuck off. You've got nothing on me." PO Newton searched § 87(2)(b) before putting him inside the van and did not find any contraband.

PO Newton denied approaching § 87(2)(b) with his backhand raised and saying to him, "You're messing with the wrong one." PO Newton stated that he would not do this if § 87(2)(b) was in handcuffs. At no point did PO Santiago or any officer punch § 87(2)(b). At no point did any officer put § 87(2)(b) in a chokehold while he was inside the prisoner van. PO Newton never saw any officers having any physical interaction with § 87(2)(b) and never saw any visible injuries on him.

PO Newton could not recall any civilians approaching the scene and claiming that § 87(2)(b) was part of a psychiatric program. He added that if this had been the case, it would have been noted.

§ 87(2)(b) was transported to the 43rd Precinct in the prisoner van. PO Newton said that his previous arrest was likely inside the van but he could not recall for certain whether any other prisoners were inside the van.

PO Newton could not recall if § 87(2)(b) was strip-searched but knew for certain that he did not strip-search § 87(2)(b). PO Newton could not recall if any of the other prisoners transported along with § 87(2)(b) were strip-searched. When PO Newton was asked whether the officers had any suspicion that § 87(2)(b) was carrying narcotics, PO Newton said that as the location that § 87(2)(b) entered was a drug-prone location, the officers often suspect that those who trespass at the location have gone inside to purchase drugs. PO Newton could not recall if there was ever any suspicion that § 87(2)(b) might have been secreting narcotics, or any contraband for that matter.

There were two female officers who were a regular part of the SNEU team: Sgt. Materasso and PO Corporan. PO Newton was not certain whether either one was working that day but noted that Sgt. Materasso signed his memo book at 3:00 PM.

Officer Statements – PO Miguel Santiago

PO Miguel Santiago, a 5'9", 185-pound, § 87(2)(b) old Hispanic male with salt and pepper hair, was interviewed at the CCRB on March 18, 2008 (encl. 10 A-C). PO Santiago has been a member of service for 15 years. On August 16, 2007, PO Santiago had a 9:30 AM by 6:05 PM tour and was assigned to the apprehension car on the SNEU team. He was working with PO Newton. He was in uniform. His vehicle was an unmarked black Impala with tinted windows, RMP § 87(2)(b). PO Santiago did not have his memo book with him at the time of his interview but denied having any entries related to this incident. He was given a business card with the CCRB fax number and told to fax his memo book entries but nothing was ever received.

The SNEU team consisted of eight officers and four vehicles – the observation vehicle (usually a Toyota or Nissan), two apprehension vehicles and a prisoner van. All the members of the team, with the exception of the observation team, were in uniform and wearing raid jackets. The unmarked observation vehicle was situated in front of the site.

Around 2:30 PM, the observation team observed § 87(2)(b) enter and exit a drug-prone clean halls building at § 87(2)(b) § 87(2)(b) in less than three minutes. The observation team provided a brief description of § 87(2)(b) and directed the apprehension team to § 87(2)(b). PO Santiago could not recall the details of the description provided.

The apprehension team stopped § 87(2)(b) a block away from the observation post. The apprehension team officers were the first to approach § 87(2)(b). PO Santiago asked § 87(2)(b) where he had been coming from. § 87(2)(b) “basically told me that he was coming from a store or somewhere else.” PO Santiago asked § 87(2)(b) why he had gone inside a building. § 87(2)(b) denied going inside the building. § 87(2)(b) never claimed that he lived in a building in the area and never claimed that he had been visiting a friend. § 87(2)(b) was “pissed off” – he was asking the officers why they had stopped him and said that the officers should be doing something else. § 87(2)(b) did not have any identification on him.

At some point, the observation team came to the arrest location and confirmed that § 87(2)(b) was the same individual. The officers in the observation post never exited their vehicle. PO Santiago conducted a brief search of § 87(2)(b) and placed him under arrest. § 87(2)(b) did not offer any physical resistance.

That particular day, Lt. Guimaraes, PO Cuadra and PO Anthony were working together as the second apprehension team. They showed up at the scene in the lieutenant’s vehicle, RMP § 87(2)(b), approximately five minutes after PO Santiago and PO Newton stopped § 87(2)(b). These officers appeared at the time that PO Santiago was searching § 87(2)(b).

PO Santiago could not remember any female civilian appearing at the scene and claiming that § 87(2)(b) was part of a psychiatric center, but was certain that no officer used any profanity against a female civilian.

Unknown officers appeared at the arrest scene with the prisoner van (RMP # § 87(2)(b) at some point. § 87(2)(b) was placed inside the van and was then transported to the precinct. PO Santiago did not travel in the van to the precinct. PO Santiago could not recall whether there were other prisoners in the van at this time.

At no point was it necessary to use any force against § 87(2)(b) after he was inside the van. § 87(2)(b) was physically compliant throughout the interaction. PO Santiago denied that any officer punched § 87(2)(b) or placed a hand on his neck and put him in a chokehold. PO Santiago never observed any visible injuries on § 87(2)(b) at any point.

PO Santiago said that while he was at the precinct, § 87(2)(b) was searched “in the roll call room.” PO Santiago could not remember which officer searched § 87(2)(b) at the stationhouse. § 87(2)(b) was searched only one time at the precinct. PO Santiago explained that usually when the team gets eight prisoners or more, they usually go to the precinct at that point “to search them... take off their shoe strings, their belt. Search their sneakers. Search their zipper because usually that’s where they put the drugs in. That’s it.” PO Santiago denied that § 87(2)(b) was ever strip-searched. When PO Santiago was asked

whether there was any suspicion that § 87(2)(b) had been secreting narcotics, he replied, “Well, when you lie that you went inside a drug-prone location basically it is that you do have something on you. I mean, why didn’t he tell the truth – say, ‘Yes, I went inside the building to visit my friend.’”

PO Santiago said that it was possible that the female officer present was PO Corporan, since she was usually part of the team, but he was not certain.

Officer Statements – PO Michael Cuadra

PO Michael Cuadra, a 5’11”, 165-pound, § 87(2)(b)-old Hispanic male with brown hair, was interviewed at the CCRB on July 30, 2008 (encl. 14 A-B). PO Cuadra has been a member of service for nine years. On August 16, 2007, he had an 8:00 AM by 4:35 PM tour. He was working with the SNEU team and assigned to the observation post. He was working with PO Anthony. He was in plainclothes. He was assigned to either a grey Camry or a grey Altima – these were the typical observation post vehicles in use at that time. He could not recall the vehicle number. He did not have any memo book entries directly pertaining to this incident. He had the following memo book entries (encl. 13 A-B) for the day: “0800: PFD (‘present for duty’) Lt. Guimaraes. SNEU op w/ PO Anthony ob / PO Newton, PO Santiago p-van / Lt. Guimaraes PO Corporan [illegible].”

That day, the SNEU team had three vehicles: the observation vehicle (with PO Cuadra and PO Anthony), the van (with PO Santiago and PO Newton) and another vehicle (with Lt. Guimaraes and PO Corporan). These were the only officers who PO Cuadra was aware were on the team that day.

PO Cuadra could not recall this incident. He was shown a photo of § 87(2)(b) and given the general details of this incident. He said that the incident did not sound at all familiar. PO Cuadra claimed, however, that he did not make the observation for this particular incident and believed that he and his partner were doing something else and never exited the car around that time.

PO Cuadra explained that when working as the observation post, he and his partner never actually stop people, absent unique circumstances. He said this is because the observation post does not want to blow their cover.

Around the time and place of this incident, PO Cuadra never observed any officer punch a prisoner or put a prisoner in a chokehold. PO Cuadra was not aware whether a strip search was conducted or authorized at the stationhouse in regards to an arrest at the incident location.

Officer Statements – Lt. Fernando Guimaraes

Lt. Fernando Guimaraes, a 5’8”, 170-pound, § 87(2)(b)-old white male with black hair, was interviewed at the CCRB on September 26, 2008 (encl. 16 A-B). Lt. Guimaraes has been a member of service for 13 years. On August 16, 2007, Lt. Guimaraes had a 9:30 AM by 6:15 PM tour and was assigned as the Special Operations Lieutenant for the 43rd Precinct. Lt. Guimaraes is regularly assigned to this role, and is responsible for overseeing all of the 43rd Precinct’s seven specialized units. Lt. Guimaraes had no recollection of that particular day and therefore did not know which particular unit he might have been working with that day. He could not recall anyone specific that he was working with, but explained that he typically patrols the precinct in an unmarked car. He was in plainclothes (street attire). He was traveling either in vehicle § 87(2)(e), § (gold Ford Crown Victoria) or vehicle § 87(2)(e), § (black Chevy Impala). His memo book entries (encl. 15 A-B) contained no mention of this incident. His memo book entries stated the following: “1930 PFD (present for duty) – SOL (Special Operations Lieutenant) Duties. 1915: EOT (end of tour).”

Lt. Guimaraes could not recall this particular incident. Lt. Guimaraes viewed a photo of § 87(2)(b) and was given his general description. Lt. Guimaraes did not recognize him.

Lt. Guimaraes was given the general details of this incident and he said that none of it sounded familiar. To Lt. Guimaraes’ knowledge, no officer punched an arrestee in the face on the incident date or put a hand around a prisoner’s neck in such a way to cause his breathing to be restricted.

Lt. Guimaraes said that this area along § 87(2)(b) (between § 87(2)(b) and § 87(2)(b)) is an area plagued by drugs and violence. Lt. Guimaraes confirmed that the 'offence location' listed on the arrest report, § 87(2)(b) § 87(2)(b) is a clean halls, multiple-dwelling building where there is heavy narcotic use and which is regularly monitored by the SNEU unit.

Lt. Guimaraes doubted that any group home would exist in this area. Lt. Guimaraes said that he has been working in this area for five years and he said that if such a group home existed, then the police would likely receive numerous calls regarding emotionally disturbed people. Since this is not the case, Lt. Guimaraes doubted that any such facility or group home actually exists in this area.

To Lt. Guimaraes' knowledge, he did not authorize the strip search of any individual fitting § 87(2)(b)'s description at the 43rd Precinct on the day of the incident. If a strip search had been conducted, then it would need to be noted in a command log entry "if a desk officer did write it down." Additionally, the officers would have to record it in their memo books. Lt. Guimaraes said that hypothetically, an individual charged with trespassing might be strip-searched only in a scenario where an officer suspected that the arrestee might have secreted a narcotic based on an officer's observation.

Officer Statements – Sgt. Martine Materasso

Sgt. Martine Materasso, a 5'10", 140-pound, § 87(2)(b)-old white female with brown hair, was interviewed at the CCRB on July 30, 2008 (encl. 12 A-B). Sgt. Materasso has been a member of service for eight years. On August 16, 2007, she had an 8:15 AM by 5:12 PM tour and was originally assigned as the SNEU supervisor. She was assigned to administrative work for the whole day, however, and never went out in the field. She did not have an assigned partner that day. She was in uniform. She did not have a vehicle assigned to her at any point that day. She had the following memo book entries (encl. 11 A-B) for the day: "0815: PFD ('present for duty') 43 PCT 62-A ('out of service' – administrative). 1912: EOT ('end of tour')."

Sgt. Materasso did not recall this incident at all. She never left the stationhouse that day. She was not assigned to desk duty inside the stationhouse – she was just doing administrative work inside. She was provided with the details of this incident and shown a photo of § 87(2)(b). She said that none of it sounded familiar.

She reviewed the command log entry for § 87(2)(b)'s arrest. She said that the handwriting on the command entry was not her own. She was not certain whose handwriting it was. She said that the entry did not appear to indicate that § 87(2)(b) was strip-searched.

Sgt. Materasso was shown a copy of the roll call which indicated that she was assigned as the SNEU supervisor. She stated that on that particular day, the SNEU team was actually supervised by Lieutenant Guimaraes. Sgt. Materasso did not know whether he was originally scheduled for that day or whether he was doing overtime.

Map of Incident Location

A map of the incident location (encl. 22 A) indicates that § 87(2)(b)'s arrest location, at the corner of § 87(2)(b) and § 87(2)(b), was only two blocks away from § 87(2)(b)'s arrest location, at the corner of § 87(2)(b) and § 87(2)(b).

Requests for Documents

A request sent to MAS on September 12, 2007 (encl. 24 R) for the SPRINT and AIDED yielded negative results. The request for the UF-61 had a note indicating that it was "not required."

Requests sent to MAS on October 2, 2007 (encl. 24 N), December 19, 2007 (encl. 24 M) and March 3, 2008 (encl. 24 K) for § 87(2)(b)'s arrest photo yielded negative results.

Requests sent to the 43rd Precinct (encl. 24 I) and the Bronx Court Section (encl. 24 L) for § 87(2)(b)'s medical treatment of prisoner report yielded negative results.

Roll Call for the 43rd Precinct

The roll call for tour 2 (encl. 17 A-E) indicates that Sgt. Materasso was the SNEU supervisor that day. PO Cuadra and PO Santiago were both listed as being assigned to "court/SNEU." PO Newton and PO Cuadra both appear as being the only other members on the SNEU team. On the 'exceptions' page, it indicates that Sgt. Materasso, PO Cuadra and PO Santiago were originally scheduled at court for 9:00 AM until an undetermined time.

Lt. Guimaraes does not appear anywhere on the roll call.

Command Log for the 43rd Precinct

The command log (encl. 18 A) indicates that PO Newton signed in as arrests both § 87(2)(b) and § 87(2)(b) at 4:30 PM. § 87(2)(b)'s 'physical/mental condition' was marked as apparently normal. § 87(2)(b)'s command log entry has the following note written on the side: "Released @ 1909 DAT § 87(2)(b)." There is no mention on the command log entry of § 87(2)(b) being strip-searched.

Prisoner Holding Pen Roster for the 43rd Precinct

The prisoner holding pen roster (encl. 19 A) indicates that § 87(2)(b) and § 87(2)(b) were both lodged in the cells at 4:30 PM. A female prisoner, § 87(2)(b), was also lodged in the cells at this time. No other male prisoner was put in the cells around this time. § 87(2)(b) was apparently released at 7:09 PM. Under 'remarks' for § 87(2)(b) the following is written: "DAT § 87(2)(b)"

Court Records for Criminal Case

§ 87(2)(b)) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian Criminal Conviction History

§ 87(2)(b)) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

CCRB History of Substantiated Allegations

Lt. Guimaraes, PO Newton and PO Santiago have never had any allegations substantiated against them at the CCRB (encl. 1 A-E).

Conclusions and Recommendations

Officer Identification

Although he does not appear on the roll call, Lt. Guimaraes stated that he was working at the time of the incident. Although Lt. Guimaraes said that he was not certain which special operations team he was working with at the time of the incident, Sgt. Materasso specifically stated that Lt. Guimaraes was the supervisor of the SNEU team. Furthermore, both PO Newton and PO Santiago said that Lt. Guimaraes was the ranking officer on the team that day. § 87(2)(b), § 87(2)(g)

§ 87(2)(b) identified PO Newton by physical description and by vehicle description as the officer who allegedly threatened him with

force. § 87(2)(g) . Although PO Santiago stated that he was assigned to the apprehension car, a black Impala, on the day of the incident, it was ultimately determined that he was assigned to the prisoner van. § 87(2)(b) identified PO Santiago by physical description and by vehicle description as the officer who allegedly punched him, put him in a chokehold and strip-searched him at the stationhouse. § 87(2)(b), § 87(2)(g)

Undisputed Facts

It is undisputed that § 87(2)(b) entered and exited a building in the vicinity of his own building within just a few minutes. It is undisputed that officers subsequently approached § 87(2)(b) outside the building and questioned him. Some time later, the officers handcuffed § 87(2)(b) and put him inside the prisoner van. § 87(2)(b) was then brought to the precinct for processing and released some time later.

Disputed Issues

§ 87(2)(b), § 87(2)(g)

Assessment of Evidence

§ 87(2)(b), § 87(2)(g)

He acknowledged that he entered and exited a building within a short span of time. § 87(2)(b), § 87(2)(g)

§ 87(2)(b) denied having any injury from being punched in the face and claimed to only have a scratch from being put in the chokehold. § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g) Lt. Guimaraes denied that a strip search ever took place and said that one would happen only in a situation where it was suspected that a prisoner was secreting narcotics. PO Newton, on the other hand, said that he did not know if a strip search took place. § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegations Not Pleaded

§ 87(2)(b), § 87(2)(g)

Allegation A. Lt. Fernando Guimaraes authorized questioning § 87(2)(b)

Allegation B. Lt. Fernando Guimaraes authorized stopping § 87(2)(b)

As mentioned above, the evidence determined that Lt. Guimaraes was the ranking officer on the scene and the question and stop happened under his authority. § 87(2)(b), § 87(2)(g)

Allegation C. PO Samuel Newton threatened § 87(2)(b) with the use of force.

§ 87(2)(b), § 87(2)(g)

Allegation D. PO Miguel Santiago used physical force against § 87(2)(b)

Allegation E. PO Miguel Santiago used a chokehold against § 87(2)(b)

§ 87(2)(b), § 87(2)(g)

Allegation F. An officer spoke obscenely and rudely to § 87(2)(b)

§ 87(2)(b), § 87(2)(g)

Allegation G. PO Miguel Santiago strip-searched § 87(2)(b)

§ 87(2)(b), § 87(2)(g)
[Redacted]
[Redacted]
[Redacted]

§ 87(4-b), § 87(2)(g)
[Redacted]
[Redacted]

§ 87(4-b), § 87(2)(g)
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: